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May 16, 2017

**BY ECF**

Honorable Vernon S. Broderick  
United States District Judge  
United States Courthouse  
40 Foley Square  
New York, NY 10007

Re: United States v. Ng Lap Seng, S5 15 Cr. 706 (VSB)

Dear Judge Broderick:

On behalf of defendant, Ng Lap Seng, we write to bring to the Court's attention the government's failure to comply with the Court's order respecting certain deadlines.

First, as Your Honor knows, the government was required to submit any rebuttal expert notice by yesterday, May 15, 2017. On Friday evening, they sought a belated request for an extension of time to do so, we opposed and the Court did not issue an order granting their request. The government has submitted no such notice. Accordingly, they should be precluded from offering any such rebuttal expert testimony at trial.

Second, by order dated April 26, 2017, the Court ordered that "at least two weeks prior to trial," the government must provide defense with a statement listing all alleged co-conspirators and all alleged bribe payments "whether in cash or other items of value either directly or through third parties". The Court also ordered that the government provide a list of witnesses and exhibits two weeks before trial. Trial is scheduled to begin at 10 am on May 30.

- In compliance with this order, the government sent to the defense a "preliminary" list of exhibits and witnesses at approximately 11:00 pm last night.
- It did not, however, provide the information regarding co-conspirators and bribes, as expressly ordered by the Court. When I made inquiry this morning, the government took the position that it has all day today within which to make that submission.
- Not only is this construction of the Court's order contradicted by the clear terms of the order, it is contradicted by the government's conduct regarding the list of

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exhibits and witnesses. “Two weeks prior to trial” means, at a bare minimum, two weeks before 10:00 a.m. on May 30. That deadline has come and gone.

- That the government would flout the deadline as to this specific matter is astonishing and truly perplexing. Notwithstanding Mr. Ng’s strenuous arguments in support of an early bill of particulars on these issues, the Court afforded the government extraordinary leniency in permitting it to wait till two weeks before trial to provide the most critical information about whom the government contends to be co-conspirators and what bribe payments will be proven. As the Court is aware, the government repeatedly alludes to mysterious “cash” payments that were used as bribes. Yet, it has refused to identify when, where, how much, by whom and to whom such cash was provided. And now, notwithstanding the Court’s lenient schedule, the government blows by that as well.
- We repeat and incorporate by reference herein all prior arguments and motions relating to the severe prejudice to Mr. Ng flowing from the government’s continued dilatory conduct.

Third, by order dated April 13, 2017, the Court requested that the government commence production of 3500 materials no later than May 1, 2017. The government did not object to, or decline, the Court’s request. Instead, from May 1, to May 9, 2017, it provided “3500 materials” for 37 witnesses.

- After reviewing them, however, it became apparent that the government had sent materials that had nothing to do with anticipated government witnesses. They included statements by Qin Fei, various person interviewed at JFK airport, and persons related to the Sheri Yan investigation. We sought clarity from the government as to which of these individuals the government actually expected to call as a witness and we received no response.
- Then, late last night, the government produced another set of “3500 materials” pertaining to 20 additional individuals. Again, the majority of these statements were taken from individuals related to the Sheri Yan investigation, including her husband, Heidi Park’s sister, and the like. They, of course, are not on the government’s witness list.
- Statements by the most critical witness, Francisco Lorenzo, have not been produced. It is clear by looking at the government’s witness list that Lorenzo is the key witness. Everyone else is collateral. It is also clear from reviewing the 3500 material from a number of other witnesses that Lorenzo likely made a series of statements that tend to undermine the government’s charges and thus

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constitute Brady material. Some of his statements also likely were factors the government considered in deciding to drop the bribery charges against Jeff Yin.

- The government appears to have decided upon a course of obfuscation. It pretends to comply with the Court's request regarding the 3500 material but in a way that causes unnecessary work for the defense poring through material to determine what may be used against Mr. Ng, only to realize, at 2 a.m. that most of it is just useless.<sup>1</sup> In all of our collective years as prosecutors and defense lawyers, we can represent to the Court that we have never before encountered this kind of conduct from federal prosecutors. It is appalling.

Finally, the Court should be aware that just within the last few days, the government provided new discovery in the form of statements Mr. Ng allegedly made to Customs agents. We have yet to review these with care and will decide whether a motion to preclude should be made on the basis of inexcusable delay.

Respectfully submitted,



Tai H. Park

cc: All Counsel of Record

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<sup>1</sup> At one point, the government explained that they had limited resources and were sending us the readily available 3500 material. But there are four prosecutors assigned to this case with unknown numbers of FBI case agents. It took more time to assemble and stamp useless material than it would have to copy and send on notes of the various interviews of Lorenzo or other witnesses the government has been seeing for the last few months.